

UNIVERSITY OF CALIFORNIA, BERKELEY

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RESIDENTIAL AND STUDENT SERVICE PROGRAMS
2610 CHANNING WAY #2272
BERKELEY, CALIFORNIA 94720-2272

January 31, 2013

Mr. James Kohlstedt
Career Painter
[REDACTED]

Dear Mr. Kohlstedt:

In accordance with the University of California/[REDACTED] Article 19, this is to advise you that you will be dismissed from employment effective February 15, 2013. This action is based on the following incidents and behaviors:

- Your violation of University and RSSP Policy concerning sexual harassment;
- Your violation of the University Violence in the Workplace Policy
- Your violation of HOME policy concerning your use of university time;
- Your violation of HOME and University policy concerning inappropriate use of University property.

BACKGROUND

The Housing and Operations Maintenance and Environment (HOME) is a department within the Residential and Student Services Programs (RSSP), an auxiliary of the University of California, Berkeley (UCB or University). You have worked at the University since September 1999 and as a full-time painter since 2005 (Job description, Attachment 1).

As of September 2012, you were responsible for painting vacant student apartments primarily at University Village. University Village is a student housing development in Albany, California that houses mostly families. You received your work assignments each day from the lead painter who assigned you specific apartments to paint.

[REDACTED] on the day before you began painting a specific apartment and [REDACTED]

EVENTS LEADING TO INVESTIGATION

On September 18, 2012, Title IX Compliance Officer Denise Oldham received a call from [REDACTED], about a complaint from two temporary employees. The employees stated that, on Friday, September 14, 2012, they had entered a vacant apartment at University

Village and observed you mounting from behind an unidentified woman in what looked like a sexual act during work hours. Another woman, topless with white paint markings on her upper body, was also observed in the same area of the apartment

Due to the serious nature of the allegations you were placed on paid investigative leave effective September 20, 2012 (Attachment 2).

Between September 2012 and January 2013, The Title IX Office of Compliance investigated the allegations, assisted by the [REDACTED]. A copy of the report is attached (Attachment 3). The investigators interviewed you on September 26, 2012, and November 16, 2012. During the investigation, you were represented by [REDACTED] and accompanied, at your request, [REDACTED]

The investigators interviewed other witnesses including [REDACTED]

[REDACTED] This action is based on the findings of that investigation.

RELEVANT RULES OF CONDUCT

- University and RSSP/HOME sexual harassment policy
- HOME policy concerning use of university time
- HOME Respect and Civility policy
- HOME and University Violence in the Workplace policy
- HOME and University policy concerning use of University property

SUMMARY ACCOUNT OF ALLEGATIONS

On Tuesday, September 18, 2012 [REDACTED] came to [REDACTED]

[REDACTED] to report an incident that they had witnessed on Friday, September 14, 2012. [REDACTED] initially asked the two men to write down what they had seen. Each wrote down a very brief statement (included in Attachment 3). [REDACTED] then spoke further to [REDACTED] and [REDACTED] to gather more details.

According to [REDACTED] stated that between 2:30 and 3:00 p.m. on Friday September 14 they went to vacant unit No. 140-749, a second-floor apartment that was being prepared for new tenants. [REDACTED] opened the door and entered the apartment in front of [REDACTED]. Both of them saw you and two other people in the apartment. They described one person as a young adult woman (early 20s) with short blond hair who was naked from the waist up. The woman was standing across from the front door, holding a paint roller in one hand. She timidly said hello to [REDACTED] waving slightly with her other hand.

[REDACTED] further reported to [REDACTED] that they saw you kneeling on the floor and appearing to mount another female person. They explained that you were otherwise clothed, but appeared to withdraw from the other person and cover your genitals a second or two after [REDACTED] opened the door. Both described body motions by you that indicated you and the person in front of him were sexually aroused, if not in a sexual act. Because your back was to the door, they did not see your genitals; but when asked they made gestures showing you may have withdrawn and covered your genitals or 'zipped' up. [REDACTED] described that, upon hearing the door open, you and the other person immediately ran into the hallway, toward the kitchen area. [REDACTED] said they ran "like a flash" and he did not get a good look at the

other person, but noted she was dark-haired, and appeared to be holding clothing as she ran out of the room. [REDACTED] said that his view was slightly obscured, as he was standing behind [REDACTED] in the doorway, and did not have as clear a view of you and the other person as he did of the blond topless woman standing to the right.

[REDACTED] both described that after witnessing this scene they backed out of the doorway [REDACTED] closed the door, and they turned to leave. After descending a few stairs, they stated that you opened the front door and told them something like, "Obviously the apartment's not ready." [REDACTED] told [REDACTED] that they did not see you during the rest of that day. They clocked out and left for the day at the normal time, about 3:45 p.m. At the end of his shift [REDACTED] went [REDACTED] to do paperwork, according to the end-of-day routine. When they left, both men stated separately that they recalled seeing your University van still parked in front of the building No. 140. It was explained that one could easily see that building from the parking lot that is adjacent to [REDACTED] where the [REDACTED] complete their paperwork at the end of the day. [REDACTED] said they left about 10 minutes early that day, and also commented that [REDACTED]

Unable to complete their work that Friday, they returned to work in the same apartment on Monday, September 17, 2012. When they returned to apartment no. 140-749 that afternoon for another attempt at [REDACTED] found the apartment to be "a complete mess." He said it was not in that state when they'd seen it mid-afternoon on the previous Friday. He described that there were food containers and wrappers all over the floor and that the toilet was blocked with more wrappers and with feces.

[REDACTED] stated that when they came to work on Monday, September 17, 2012, they separately saw you at morning check-in. Both of them independently observed that you first acted "like nothing ever happened." Later that day [REDACTED] told [REDACTED] that he had an subsequent encounter with you later that September 17th morning after the check-in when he [REDACTED] had seen you make a "zipped lips" gesture to him, seemingly to refer to what had been witnessed the previous Friday, implying that he should not tell anyone.

The following day, Tuesday, September 18, 2012 [REDACTED] found a happy face spray-painted on their work vehicle, which they believe you did to intimidate them and keep them from reporting the previous Friday incident they had witnessed.

YOUR RESPONSES TO THE ALLEGATIONS

You were interviewed on September 26, 2012. Follow-up emails were received from you on October 3 and 12. You were again interviewed on November 14, 2012, to obtain further follow-up responses from you concerning other witness' statements in the investigation.

You denied any sexual activity, said that the allegations were "totally out of the blue," "completely not true," and that this was a case of people "making up lies". You stated that the women in the apartment were in fact your [REDACTED]. You indicated that you have had many visits to the workplace from [REDACTED] over time, and that such visits were sanctioned specifically by a [REDACTED] in the Department.

When asked to provide photographs of the persons you represented as having been in the apartment on September 14, you at first refused to provide them; subsequently you provided them. Later in the investigation, when asked for any information by which the investigators could contact them and obtain statements, you declined, stating it was "not necessary," and that you did not want to "drag them into it."

The persons you said were your [REDACTED] were portrayed as standing around in the apartment for at least two hours without any place to sit, while you were allegedly painting. You said they were dressed nicely, as they had been job hunting earlier that day, and that they spent time laughing and giggling and applying makeup in the bathroom. You did not recall specifically the blocked toilet, but indicated that it is your habit to leave food and wrappers around from breakfast and lunch while you have been working. You said that some of the mess was in the apartment before you arrived.

The reporting witnesses were portrayed by you as motivated to report the information so that you would be fired and that one of them could then obtain permanent employment through your termination.

You admitted to painting the happy face on the work truck of [REDACTED] but said it was a practical joke in response to one of them taping a McDonald's toy doll onto your truck antennae (which both men denied doing). You denied making any "zipped lips" gesture to [REDACTED]

OTHER WITNESS INFORMATION

In addition to [REDACTED] the investigators interviewed the following witnesses in preparing their report:

[REDACTED] (interviewed October 5, 2012): [REDACTED] coordinates the [REDACTED]

[REDACTED] stated that it was not common or an approved practice for members of the public [i.e., non-University friends or family members] to enter work sites where employees were painting or making repairs.

[REDACTED] (interviewed October 1, November 14, 2012): [REDACTED] stated that he discovered you at another apartment with a woman approximately six weeks before the September 14 incident. At that time, he reminded you about the prohibition against allowing non-University friends or family members enter the work site. [REDACTED] denied that it was a common practice to have relatives and friends at work while painting as you claim. [REDACTED] also commented that it would not have been a good strategy for [REDACTED] to try to get you in trouble in order to obtain a job, given that the workers employed in the Trades are all close and would know what had potentially occurred and be resentful if they believed that was the two men's motivation. Further, other temporary workers with longer University work history and time would have potentially been ahead of them in line to obtain employment. [REDACTED] commented.

[REDACTED] (interviewed November 15, 2012): (Job Title) The investigator asked [REDACTED] about her previous experience with [REDACTED] in 2010, in response to your allegation that [REDACTED] was not a reliable witness. [REDACTED] indicated a [REDACTED]

FINDINGS OF INVESTIGATION

According to the investigation report, the investigators did not find your responses credible, and concluded that it was more likely than not that you engaged in the actions as reported by [REDACTED]

Violation of use of University Property

Also the activities detailed in the investigation, delineated fully in the attached report (Attachment 3), showed that you violated HOME policy concerning the use of university property. You used the vacant property for personal activities of a sexual nature, allowed non-University employees to be present for a long period of time at least in the afternoon of September 14, 2012 and littered and misused the premises leaving a clogged toilet and other trash all over the unit. This was done either directly by yourself and/or by the unauthorized persons present at the apartment with you. You also defaced University property by painting the happy face on the workers' university vehicle. Given the strength and consistency of the witness statements over the course of the investigation, your accounting of your time and your responses to the statements of the witnesses are not believable. Your actions violated HOME policy (Handbook Page 10, attachment 3), and opened the University to possible liability should the third parties get injured at a work site..

Violation of use of University time

Also, the investigators report showed that there was a violation of the HOME policy regarding the use of paid university time. You were engaged in non-work sexual activity with two persons in the vacant apartment, for some period of time at least in the afternoon of September 14. At a minimum, you misused several hours of university time for which you were paid, but you were not performing your assigned duties. You did not truthfully account for your time that day, and clearly misused University time for personal non-work purposes. See HOME Handbook Page 9, Time Recording, Page 8 Unwarranted extension of meals or rest periods (Attachment 5).

Violation of Respect and Civility Policy, Violence in the Workplace Policy

Your actions in making a "zipped lips" gesture to [REDACTED] and painting a happy face on the [REDACTED] work truck on Monday September 17, were found to be intimidating, bullying and harassing actions towards the witnesses. Those actions are prohibited under the policies, and by their nature were found to be violations both of the HOME Respect and Civility Policy, and the Violence in the Workplace Policy. They also were found to be violations of the Sexual Harassment policy, discussed below.

Violation of Sexual Harassment Policy

The investigation report further finds that there was a violation of the University and HOME sexual harassment policy, given the impact of the behavior the two witnesses walked in and viewed. They concluded that the witnesses' statements and continuity of their accounts were credible, and that yours were not. Therefore, the investigators determine that it is more likely than not that you engaged in sexual activity with two unidentified people in a vacant University Village apartment on September 14, 2012.

The investigators concluded that even if the zipped lips gesture and happy face incident had been misinterpreted or misunderstood by the complainants, the single graphic sexual encounter stands alone as an act so serious and offensive in the context of the workplace, that it would constitute an objectively offensive working environment for any employee regardless of sex (i.e., male or female). They found that no reasonable person would expect, during work hours and on work premises, to walk in on a co-worker engaged in a sexual activity. The investigators therefore determined that your sexual activity with two unidentified people in a vacant University Village apartment on September 14, 2012 created a sexually hostile work environment for [REDACTED] in violation of the UC Policy on Sexual Harassment.

CONCLUSION

The evidence has been evaluated as a whole and consideration given to your account of the events. Based on the evidence, I conclude that:

Your explanation of your conduct on September 14th is inconsistent with that of the witnesses. Given the consistency and specificity of the witnesses' reports, your accounting of your time and conduct is found not credible. While you stated you had arrived at UVA in the morning and were allegedly painting all day, it was reported by the witnesses that you were not painting in the afternoon when they discovered you in the vacant apartment with two women at approximately 2:30 p.m. Given the activities reported by the witnesses, you obviously had been there for some time previously with the women. Your car remained at the site until at least 3:45, close to the end of the work day. While scheduled and paid on the clock at the work site, you were not working from at least 1:30 until likely after 3:45, a minimum 2 hours and 15 minutes of not doing University work, and probably longer. You were not conducting work business at the work site, and did not have approval for any deviations from your schedule that day.

Your assertions concerning the motives of the reporting witnesses [REDACTED] were not found to be credible. It was not found that there was any likely motivation for them to have fabricated their report, especially one based on any interest in discrediting you so that one could get your job. Your further assertions concerning [REDACTED] lack of credibility due to an issue he raised approximately two years before was also not found to be valid. Your accounting that the two women who were there were [REDACTED] [REDACTED] was not validated, not credible, and an apparent fabrication in direct contrast to the specific reports made by the witnesses [REDACTED]

In summary, you did not sufficiently account for your time that day and misused University time for personal, non-work purposes. See HOME Handbook Page 9, Time Recording, Page 8 Unwarranted extension of meals or rest periods. By taking non-University employees into the vacant apartment, you also violated HOMe policy (Handbook, page 10) by misusing the University property, given your inappropriate actions inside the apartment, and the condition the apartment was left in. Your actions placed the University in a situation where it could be liable had an injury occurred at the property. You violated both the sexual harassment policy, the violence in the workplace policy, and the Respect and Civility policy by your actions on September 14, and in the following week against the employees who had observed and reported those actions.

Based on the evidence, we conclude that your actions in total were an egregious violation of policies, and do not warrant you remaining as an employee for the University.

EMPLOYMENT ACTION

Therefore in accordance with University of California/[REDACTED]

[REDACTED] you are being dismissed effective February 15,

2013.

You have the right to respond to this Notice either orally or in writing, within fifteen (15) calendar days of the issuance of this letter, by February 14, 2012. Please direct your response to [REDACTED]

[REDACTED] 2610 Channing Way,

Berkeley, CA 94720.

Sincerely,

A large rectangular area of the document has been completely blacked out, obscuring a handwritten signature.

Attachment 1 Job Description, Painter

Attachment 2 January, 2013 Investigative report

Attachment 3 RSSP/HOME Employee Handbook policy concerning university property,

Attachment 4 University and RSSP/HOME Sexual harassment policy

Attachment 5 RSSP/HOME policy regarding use of University time; Unwarranted extension of meals or rest periods

Attachment 6 RSSP/HOME Respect and Civility Policy

Attachment 7 RSSP/HOME Violence in the Workplace policies

Attachment 8 Proof of Service

cc: Employee Personnel File (with attachments)

Payroll File (with attachments)

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OFFICE OF THE ASSOCIATE VICE CHANCELLOR
RESIDENTIAL AND STUDENT SERVICE PROGRAMS
2610 CHANNING WAY
BERKELEY, CALIFORNIA 94720-2272

April 3, 2013

[REDACTED] Director, Housing Operations Maintenance & Environment (HOME)
RSSP

RE: Notice of Intent to Dismiss-James Kohlstedt

This is a summary of my findings and my recommendation for final decision regarding the Notice of Intent to Dismiss for HOME painter James Kohlstedt.

Background

Mr. Kohlstedt was served a Notice of Intent to Dismiss on January 31, 2013 for violating a number of different UC, RSSP, and HOME policies, specifically policies concerning, sexual harassment, violence in the workplace, use of university time, and inappropriate use of University property.

I met with Mr. Kohlstedt, [REDACTED] on March 11, 2013. During our meeting, Mr. Kohlstedt said he did not receive the "Intent to Dismiss" letter with accompanying documents through the mail but received a copy through [REDACTED]. I asked if the address on the letter [REDACTED] was the correct address and Mr. Kohlstedt stated it was correct.

I asked Mr. Kohlstedt if he understood the purpose of the review meeting and he stated he did. I asked if he reviewed the documents regarding his situation and he stated he had.

The Review

Mr. Kohlstedt began by saying he was "surprised" by the Intent to Dismiss from RSSP and said that he was a "long time employee" and that the case was based on "hearsay" and possibly "bias" from the two witnesses, [REDACTED] and [REDACTED]. Mr. Kohlstedt went on to say that it was "their [REDACTED] word against his".

I asked Mr. Kohlstedt to describe the events that transpired on September 14, 2012 in the apartment in UVA and he reported the following:

1. According to Kohlstedt, the two women in the apartment with him were his [REDACTED] and [REDACTED]. He later explained that the two had asked for a ride home and were waiting for Mr. Kohlstedt to finish work and drive them home.
2. Contrary to the investigative report, Mr. Kohlstedt said that only one of the two [REDACTED] came to the door of the apartment occupied by Kohlstedt and only [REDACTED] saw him in the apartment. According to Mr. Kohlstedt, [REDACTED] was not there at the apartment door when [REDACTED] viewed Mr. Kohlstedt.
3. Mr. Kohlstedt recalls the apartment being very messy when he arrived to begin painting and this delayed his painting work that day as he had to clean up first and he also had to paint baseboards in the apartment.

April 3, 2013

4. He admitted that he brought take-out food to this job because he had to work through lunch but does not recall the toilet being clogged or leaving much extra trash in the apartment that day.
5. He asked that we check the work-order tags for that apartment to verify the apartment was messy prior to him entering the apartment to paint.

Note: I checked work tags associated with Apt. 140-749 and there is a completed check list from custodial staff dated September 13 saying the apartment was cleaned that day (HM-200788). This was the day prior to Mr. Kohlstedt being in the apartment to paint.

The Investigation

Mr. Kohlstedt stated he thought the investigation was "not fair" and reported that there was "snickering" and "laughter" coming from UCPD representatives as well as from [REDACTED] during the meeting with him. Kohlstedt said this was embarrassing to him and also [REDACTED] was present. I asked Mr. Kohlstedt why [REDACTED] was invited to the investigative meeting and he replied, "I didn't know what the meeting was about so I asked her to come."

I asked Mr. Kohlstedt about his hesitancy to have [REDACTED] or [REDACTED] provide statements to the investigators and he reiterated his comments made earlier during the investigation that he "did not want to get them involved". However, Mr. Kohlstedt added that he had spoken to both [REDACTED] and [REDACTED] and they were willing to provide statements now. I asked Mr. Kohlstedt to provide me with contact information for the two women and that I would contact them as part of my review. I informed Mr. Kohlstedt that since this was happening after the investigation of his case, any subsequent information provided would be considered by me in my review of his case and not be part of the official investigation. He said he understood. [Attachment One: email records between [REDACTED] and Kohlstedt regarding these additional statements]

Mr. Kohlstedt concluded his remarks by admitting that he was guilty of having family members at work with him but that did not deserve dismissal. He requested a fifteen day suspension without pay instead of termination.

Recommendation

After reviewing the original investigative documents numerous times, meeting with Mr. Kohlstedt, and attempting without success to receive supplemental statements from his two witnesses, I recommend that Mr. Kohlstedt be terminated as recommended.

Mr. Kohlstedt's version of what happened on September 14 is not the slightest bit consistent with the testimonies of multiple credible witnesses and when offered the opportunity to provide supplemental information through statements from [REDACTED] and [REDACTED] he chose not to follow the instructions provided to him in order to make such support information available. I believe the investigation was thorough, sufficient, and fair.

There is significant evidence that Mr. Kohlstedt's behavior was in violation of UC policies concerning, sexual harassment, violence in the workplace, use of university time, and inappropriate use of University property. Mr. Kohlstedt admitted "being guilty of having family at work" and suggested a fifteen day suspension without pay as punishment instead of dismissal but I support the decision to dismiss. There was precedent for his actions (according to [REDACTED] comments about seeing Mr. Kohlstedt with another woman six months prior) and his actions seriously impacted others on his work team. There was also no validity in Mr. Kohlstedt's assertion that [REDACTED] and [REDACTED] were making up the story to get his job. His actions were significant and do not warrant him remaining a UC employee.

April 3, 2013

Sincerely,



cc:



Attachment.

April 3, 2013

Attachment One

Communication between [REDACTED] and James Kohlstedt following the March 11, 2013 hearing regarding possible statements from [REDACTED]

----- Original Message -----

Subject:Contact info

Date:Fri, 15 Mar 2013 09:47:58 -0700 (PDT)

From:[REDACTED]

Reply-To:[REDACTED]

To:[REDACTED]

CC:[REDACTED]

Here is the contact info for my [REDACTED]. I do apologize for the delay.

[REDACTED]
[REDACTED] works full time and [REDACTED], so you may get voicemail, but they will return your call.

Thank you

James

Sent from Yahoo! Mail on Android

----- Original Message -----

Subject:Re: Contact info

Date:Fri, 15 Mar 2013 19:02:38 -0700

From:[REDACTED]

Organization:RSSP, University of California, Berkeley

To:[REDACTED]

CC:[REDACTED]

Thank you, James, for passing on this contact information.

In order for submissions from these two individuals to be submitted, they must be able to present their statements in person and with proper proof of identity (e.g., driver's license or passport). As mentioned in your review hearing, because these statements are coming after closure of the formal investigation, I would be considering their statements only as part of my review process at this time. Any further action based on submitted information from [REDACTED] would be up to HOME management to decide after I have made a recommendation to them.

If both women are available and able to do in-person interviews, I will contact them to set up times.

April 3, 2013

[REDACTED]

No Response received from Kohlstedt

----- Original Message -----

Subject: Re: Contact info
Date: Wed, 20 Mar 2013 12:39:57 -0700
From: [REDACTED]
Organization: RSSP, University of California, Berkeley
To: [REDACTED]
CC: [REDACTED]

James:

I'm going to complete my recommendation regarding the Intent to Dismiss for you by the end of this week. When you called Monday, you mentioned that your attorney would be sending something regarding your case. Has this occurred? I will need to receive any documents you want considered in my review by 5pm, Thursday, March 21.

Also, you mentioned during our meeting that you did not receive the Intent to Dismiss by mail. Is your current address, [REDACTED]?

Thank you.

[REDACTED]

No Response received from Kohlstedt, as of April 1, 2013

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RESIDENTIAL AND STUDENT SERVICE PROGRAMS
2610 CHANNING WAY #2272
BERKELEY, CALIFORNIA 94720-2272

April 18, 2013

Mr. James Kohlstedt
Career Painter
[REDACTED]

Dear Mr. Kohlstedt:

On January 31, 2013, you were issued a notice of intent to dismiss you from University employment. Following that letter you requested a Skelly Review. Subsequently on March 11, 2013, a review was conducted and I have received Skelly Reviewer [REDACTED] report summarizing that meeting. The report is attached for your review.

After considering the facts you presented in your hearing and reviewing the facts of this case, it is reviewer [REDACTED] recommendation to move forward with your dismissal, specifically for violating UC Policies concerning sexual harassment, violence in the workplace, use of university time, and inappropriate use of University property.

Consequently, in accordance with Article 19 of the [REDACTED] Agreement, this is to confirm your dismissal from University employment, effective April 25, 2013. This dismissal is due to violation of UC Policies..

You may review the UC [REDACTED] Agreement for your possible appeal rights.

Sincerely,

Attachments: Skelly Review Report
Proof of Service

Cc: Employee Personnel File
Payroll File
[REDACTED]

October 3, 2013

The Joint Conference Board hearing panel has
unanimously agreed to uphold the termination of
James Kohlstedt by the University of California, Berkeley.

This panel is upholding the letter of dated January 31, 2013.

